carried out his intention by ordering that the trust property be used for the benefit of the hospital already in operation. If, then, a court of equity, by the application of *cy pres* doctrine, will order the trust property to be used for a charity other than the one specified by the testator because it would be impracticable to carry out his specific intention, *a fortiori* should they apply the *cy pres* doctrine when the impracticability arises merely in the mode of the administration of the trust property. As pointed out in the principal case, where the essential thing in the testator's mind was the mode prescribed for carrying out his wishes, and not a general intent to devote the funds to charity, the doctrine of *cy pres* cannot apply if the particular mode prescribed by the testator is impracticable or illegal. In the instant case definite charities were created, but the particular mode by which they were to be effectuated had become impossible. By substituting another mode the substantial intention of the testator was not made to depend upon his formal intention. The doctrine *cy pres* adopted to this extent is in harmony with the equitable rule that a liberal construction is to be given to charitable donations to accomplish the general charitable intent of the donor. The decision in the principal case is sound and would no doubt be followed in all jurisdictions recognizing, in any form, the *cy pres* doctrine.

CONSTITUTIONAL LAW—FIXING PRICES FOR SALE OF NECESSARIES UNDER LEVER ACT IS DEPRIVING OF PROPERTY WITHOUT DUE PROCESS OF LAW.—A demurrer was filed to a count of an indictment charging defendants with violating the provision of the Lever Act making it unlawful to make any unjust charges in dealing with necessaries, on the ground that the provision contravenes the Fifth Amendment to the Federal Constitution. *Held,* that the provision takes property without due process of law, and is therefore unconstitutional. *United States* v. *Bernstein* (Neb., D. C., 1920), 267 Fed. 296.

The argument of the court may be briefly summarized as follows: In the first place, the validity of war measures, however desirable, must stand the test of constitutional limitations, and cannot be sustained if rights guaranteed by the fundamental law are infringed thereby. Secondly, the value of an individual citizen's property right, in such necessaries as he deals in, is derived almost entirely from his right to sell freely, according to the course of trade and commerce. An incident of such trade and commerce between individuals is the fixing of a price. Finally, a law which makes it a crime for a man to sell his private property, not clothed with a public interest, for the best price he can get in the ordinary course of trade and commerce, cannot be sustained, while the Constitution forbids the taking of private property for public use without just compensation, and insures that no person shall be deprived of his property without due process of law. Obviously, the court overlooked the only real point in the case when it assumed with delightful *naiveté* that it was dealing with property wholly unaffected with any public interest. If necessaries of life are not "clothed with a public interest" the argument is unimpeachable but too elementary to necessitate any discussion. If, on the other hand, the business of dealing

in necessaries may be said to be clothed with a public interest, the argument advanced by the court is wholly inapplicable. It is almost inconceivable that a supposedly intelligent court should decide a case of this sort without even considering the possibility of the business of handling necessaries being affected with a public interest, in time of war at least. The only possible explanation would seem to be that the court has become impressed with the reasoning of the often-rejected dissenting opinions, in *Munn* v. *Illinois,* 94 U. S. 113, and its successors, including *German Alliance Ins Co.* v. *Lewis,* 233 U. S. 389, in which it has been contended that a "public interest" is impossible apart from a public use. The contrary has been held so often by the Supreme Court of the United States that this view can scarcely be seriously considered at the present time. For a further discussion of the circumstances under which businesses and property may be said to be "affected with a public interest," see 19 MICH. L. REV. 74. See also *Weed & Co.* v. *Lockwood* (C. C. A., 2nd Circuit, 1920), 266 Fed. 785, *infra,* holding *contra* to the principal case.

CONSTITUTIONAL LAW—IS PROVISION OF LEVER ACT MAKING UNREASONABLE CHARGES FOR NECESSARIES UNLAWFUL VIOLATION OF SIXTH AMENDMENT TO FEDERAL CONSTITUTION?—A provision of the Lever Act makes it unlawful for any person wilfully to make any unjust or unreasonable charge in handling or dealing in necessaries, and provides a penalty of a fine and imprisonment for its violation. A demurrer was filed to an indictment under this provision on the ground that it violates the Sixth Amendment to the Federal Constitution providing that in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation, inasmuch as no standard is established whereby a person can determine in advance what specific acts will be held to be criminal. *Held,* the provision is void. *United States* v. *Bernstein* (Neb., D. C., 1920), 267 Fed. 295. On a bill to restrain the United States district attorney from proceeding on a similar indictment, *held,* the provision is valid. *Weed & Co.* v. *Lockwood* (C. C. A., 2nd Cir., 1920), 266 Fed. 785.

Louisville & N. R. Co. v. *R. R. Comm. of Tenn.,* 19 Fed. 679; *Louisville & N. R. Co.* v. *Commonwealth,* 99 Ky. 132, and *Tozer* v. *U. S.,* 52 Fed. 917, are cited in support of the first principal case. In none of these cases was the objection made that the particular statute involved violated the Sixth Amendment. The first two cases were quasi-criminal actions to recover penalties for violations of statutes making unjust discriminations and the charging of unreasonable rates unlawful. In the first of these the statute was declared void, apparently on the ground that it was a delegation to the jury of the law-making power. In the Kentucky case the objection was made and upheld that the failure to provide a standard of conduct violates "due process." The *Tozer* case seems to rest solely upon a statement by Justice Brewer to the effect that persons are entitled to know in advance whether or not particular acts constitute crimes. See also *U. S.* v. *Capital Traction Co.,* 34 App. (D. C.) 592; *Czarra* v. *Board of Medical Examiners,*